

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>IN RE</b>	)	
	)	
BRIAN TODD MANSFIELD,	)	<b>Case No. 98-03309</b>
JUDITH LEE MANSFIELD,	)	
	)	<b>SUMMARY ORDER</b>
<b>Debtors.</b>	)	
_____	)	

Debtors each claim a firearm as exempt under Idaho Code § 11-605(1)(a). The Chapter 7 Trustee objects, asserting that two firearms are not reasonably necessary for Debtors' household. At a hearing on February 1, 1999, the Court and Trustee received Debtors' offer of proof that Mr. Mansfield needs the 30.06 caliber rifle for hunting, and that Mrs. Mansfield needs the shotgun for protection. However, even if the offer of proof is accepted as true, Debtors have not shown a right to exempt more than one firearm.

Debtors rely upon *In re Biancavilla*, 94 I.B.C.R. 150, wherein the Court held that each individual debtor may exempt a firearm under the state statute. That law is good as far as it goes. However, in subsequent decisions of this Court, debtors are reminded that they must still meet the mandate of the statute by showing that it is reasonably necessary to retain more than one firearm, and that an "unnecessary" firearm is not exempt. See *In re Leyboldt*,

96.2 I.B.C.R. 69 (“reasonableness” showing for first firearm is minimal, but is more demanding for a second firearm); *In re Bond*, 96.2 I.B.C.R. 72. Moreover, while the Court is willing to sustain an objection claim based upon a debtor’s practice of hunting for food, “[t]he Court will not assume that every debtor reasonably requires a gun in the home, car or on his person [for personal protection] as a fact of life.” *In re Anderson*, 97.1 I.B.C.R. 7. Since no showing is offered by Debtors here that they have a special or heightened need for protection or are subject to any unusual security threats at their home, they have not shown the shotgun is reasonably necessary for their household.

Debtors also argue that Mrs. Mansfield should be able to retain the shotgun for protection as a right guaranteed by Article I, § 11 of the Idaho Constitution, which provides that:

The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation

of firearms, except those actually used in the commission of a felony.

Idaho Const. Art. I, § 11.

The Trustee's statutory authority in this case is Section 542 of the Bankruptcy Code, which requires a debtor to deliver to a trustee any property, or the value of such property, that is not exempt under Section 522. 11 U.S.C.

§ 542(a). Section 522 allows a debtor to exempt property either listed in Section 522(d) or, if the state law applicable to the debtor does not allow such, "any property that is exempt under Federal law, other than [Section 522(d)], or State or local law that is applicable . . . ." 11 U.S.C. § 522(b)(1) and (2). Idaho has "opted out" of the federal bankruptcy exemption scheme outlined in Section 522(d). Idaho Code § 11-609. The result is that debtors in Idaho must look to state law to define the applicable exemptions allowed by the Bankruptcy Code.

The particular exemption statute applicable here provides:

(1) An individual is entitled to exemption of the following property to the extent of a value not exceeding five hundred dollars (\$500) on any one (1) item of property and not to exceed a total value of four thousand dollars (\$4,000) per household for all items exempted under this subsection:

(a) furnishings and appliances reasonably necessary for one (1) household, including one (1) firearm.

Idaho Code § 11-605(1)(a).

The Idaho Constitution mandates that its citizens' right to bear arms will not be abridged, except for certain express situations in which the legislature may restrict that right. The legislature, through the exemption statute, limits a debtor's ability to stave off creditors seeking to collect debts from the debtor's property to one reasonably necessary gun. As applied here, the effect of the exemption statute is to allow Debtors to keep one gun in their household, while absent a showing of reasonable necessity for the household, any other guns must be turned over to Trustee for liquidation pursuant to Section 542. Can the provisions of the Idaho Constitution be reconciled with the exemption statute contained in Idaho Code § 11-605(1)(a)?

Recall, it is the Bankruptcy Code that allows debtors in bankruptcy cases to exempt property. Therefore, the question becomes whether Section 522(b) of the Bankruptcy Code merely incorporates the Idaho exemption law. If this Court were to conclude that through Section 522(b) of the Bankruptcy Code, the limitations on exemption of guns found in Idaho Code § 11-605 are the functional equivalent of federal law, then the Idaho exemption limiting a household to one gun would, by virtue of the Supremacy Clause to the U.S. Constitution, trump the right to bear arms provision of the Idaho Constitution.<sup>1</sup>

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<sup>1</sup> The Supremacy Clause provides that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be

On the other hand, if the Court rejects the incorporation theory, the Court must decide whether the Idaho exemption statute is unenforceable under the Idaho Constitution.

Several courts have addressed the arguable incorporation or adoption of state law via Section 522(b) of the Code. The clear majority of decisions addressing the topic have declined to embrace an incorporation or adoption theory. See, e.g., *Siegel v. Swaine (In re Siegel)*, 105 B.R. 556, 561-62 (D. Arizona 1989)(it is not clear that Congress intended to adopt specific state laws relating to exemptions); *In re Weeks*, 106 B.R. 257, 263 (Bankr. E.D. Oklahoma 1989)(theory that state exemption laws are incorporated into Bankruptcy Code through ability of states to opt out of federal exemption scheme is unfounded). The courts rejecting the incorporation argument have done so to prohibit preemption of ERISA by a state exemption law.<sup>2</sup>

Another court, while embracing the incorporation theory, stated that:

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the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Constitution, Article VI, cl. 2.

<sup>2</sup> ERISA provides for supersedure of state law but does not allow supersedure of other federal law. 29 U.S.C. § 1144(a) and (d). Thus, if state exemption laws are in effect "federalized," the state exemption law would trump ERISA provisions.

The argument cannot reasonably be made that 11 U.S.C. § 522(b)(2)(A) permits a state legislature to create exemptions in violation of the state's constitution because of the supremacy of federal law over state law in the area of bankruptcy. The language Congress chose does not evidence an intent to override the state law concerning exemptions but to incorporate it into the Bankruptcy Code.

*In re Hudspeth*, 92 B.R. 827, 831 (Bankr. W.D. Arkansas 1988). The Court in *Hudspeth* went on to strike down the Arkansas exemption statute as unconstitutional. *Id.*

On its face, Section 522(b)(2)(A) is neutral as to any adoption or incorporation of state exemption laws. 11 U.S.C. § 522(b)(2)(A). The Eighth Circuit in *Checkett v. Vickers (Vickers)*, 954 F.2d 1426 (8th Cir. 1992), *cert. denied*, 505 U.S. 1235 (1992), held that where the state exemption was virtually identical to the federal exemption, there was no logical reason to give the federal exemption preemptive effect and not afford the state statute the same benefit. In effect, *Vickers* incorporated state exemption laws to the extent that they were similar to the federal exemptions. That is simply not the case here. There is no federal exemption that allows an exemption for one gun that is reasonably necessary for a household. Therefore, it would make little sense to give Idaho Code § 11-605 the effect of federal law just because Idaho has opted out of the

federal exemption scheme. See *Siegel v. Swaine (In re Siegel)*, 105 B.R. 556, 562 (D. Arizona 1989); *In re Weeks*, 106 B.R. 257, 263 (Bankr. E.D. Okla.1989). Thus, Idaho Code § 11-605 is not incorporated in the Bankruptcy Code, and cannot preempt conflicting provisions of the Idaho Constitution.

The Court next turns to the constitutionality of the exemption statute. In determining whether a state law is unconstitutional, there is a strong presumption in favor of the constitutionality of the law. *State v. Cobb*, 969 P.2d 244, 246 (Idaho 1998). “A statute should not be held void for uncertainty if any practical interpretation can be given it.” *Id.*

Here, the state exemption does not in any way impair the constitutional provision protecting the right to bear arms. Instead, it compliments that right. By allowing each household to maintain reasonably necessary guns, the exemption enhances the right to bear arms. In operation, the exemption statute allows a debtor to shield a gun that could otherwise be used to satisfy the claims of creditors. Further, the exemption law in no way restricts a debtor’s current or prospective ability to bear arms. The key distinction to be drawn here is between the right to *bear* arms and the *ability* to bear arms.

The right to bear arms has been interpreted as a constitutional guarantee for the people, individually, to keep a gun for their security and

defense. *State v. Hart*, 157 P.2d 72, 73 (Idaho 1945). The Idaho Constitution does not guarantee that every citizen will have the financial ability to bear arms.

If a debtor purchases a gun on credit, granting the seller a security interest in the gun, and later defaults on his payment obligation, the seller, under the Idaho Uniform Commercial Code, could seek to repossess and sell the gun in satisfaction of the debt. Do the seller's rights under the UCC infringe upon the debtor's right to bear arms? The answer is, logically, no. While the creditor may take possession and eventually ownership of the gun from the debtor, the creditor has done nothing to restrict the debtor's right to bear arms. The debtor continues to have the right to bear arms, despite the debtor's lack of financial ability to do so.

Similarly, in this case Debtors' right to bear arms is not impacted. They are allowed to exempt one of their guns under Idaho law. However, their ability to retain more than one gun is limited by the exemption statute, since Debtors have failed to show that additional guns are reasonably necessary for their household. In other words, their right to bear arms remains inviolate. It is their financial condition that leads them to their predicament. To hold otherwise would encourage debtors to convert all nonexempt assets into guns, something obviously not intended by the Idaho Constitution.



For these reasons, the exemption limitations on firearms contained in Idaho Code § 11-605 do not violate the Idaho Constitution. **IT IS HEREBY ORDERED THAT** Trustee's objection to Debtors' claim of exemption as to the shotgun is hereby **SUSTAINED**, and Debtors' claim of exemption in the shotgun is hereby **DISALLOWED**.

DATED This \_\_\_\_ day of March, 1999.

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JIM D. PAPPAS  
U. S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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CASE NO: 98-03309

CAMERON S. BURKE, CLERK  
U.S. BANKRUPTCY COURT

DATED:

By \_\_\_\_\_  
Deputy Clerk